IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY SECOND DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 5009 of 2004

Between:

A.Gowri Shanker Rao, S/o A.Jagga Rao
Bobbili, Vizianagaram District

(Under orders of transfer to AP.Residential School,

Santhanuthalapadu, Prakasam Dist

..... PETITIONER

AND

1 The Secretary A.P.R.E.I. Society
3rd Floor, Gagan Vihar, M.J.Road, Nampally , Hyderabad
2 The Principal , AP, Residential School for Boys, Bobbili, Vizianagram Dist
3 Secretary , Education Department Government of AP, Secretariat, Hyderabad
4 Reddy Uma Maheswari Tribal Welfare School, Paderu,

Visakhapatnam District (On deputation AP Residential School

for Boys, Bobbili, Vizianagaram District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ , order or direction more in the nature of Certiorari Calling for the records relating to the impugned Proce.RC.No.6813/C2-1/AB-1/2000-2004, dt. 8/03/2004 issued by the Secretary, AP. Residential Educational Institutional society, Hyderabad and quash the same as illegal, arbitrary, unjust and violative of Art. 14,16 and 21 of the Constitution of India and also contrary to the letter and spirit of the presidential order and consequently hold that the petitioner is entitled tobe posted in

AP Residential School, Bobbili on his reinstatement and pass

Counsel for the Petitioner: MR.D.BALA KISHAN RAO

Counsel for the Respondent Nos.1 & 2: MR. VIJAYA BHASKAR MOOLA

Counsel for the Respondent No.3: GP FOR EDUCATION

The Court made the following:

ORAL ORDER:

This writ petition is filed questioning the order dated 8-3-2004 passed by the first respondent posting the petitioner as typist at A.P. Residential School, Santhanuthalapadu, Prakasam District, against the existing vacancy, instead of considering the request of the petitioner to post him at A.P. Residential School, Bobbili, Vizianagaram District, on his reinstatement.

The petitioner was placed under suspension with effect from 1-7-2000 consequent on his arrest on the allegation of harassing his wife. Subsequently, a criminal case was filed in C.C. 761 of 2000 before the Additional Judicial First Class Magistrate, Bobbili for the offence under Section 498-A IPC and he was acquitted by an order dated 9-2-2004. On such acquittal, the petitioner was reinstated into service. Admittedly, the petitioner was suspended while he was working at Bobbili.

This Court granted an interim direction on 23-3-2004 directing the respondents to consider the case of the petitioner as per the rules and regulations for his reposting at Bobbili. Pursuant to the said interim direction, the first respondent passed an order dated 7-5-2004 in R.C.No.6183/C2-1/A8-1/2000-04 stating that at present another candidate Smt. R. Umamaheshwari is working as typist at A.P. Residential School,

Bobbili and that she has been allotted to West Godavari District in the proposed zonalization and as such the orders were issued in favour of Smt. R. Uma Maheshwari during the counseling held in August, 2003. But, the process of implementation of zonalization has been stayed by this Court with directions not to give effect to the transfer orders issued during the counseling held in August 2003. Pursuant to the aforesaid orders, as the entire State is only one Zone, it will not be possible now to transfer the petitioner from Santhanuthalapadu to Bobbili. Hence, the request of the petitioner to transfer him to A.P. Residential School, Bobbili, is rejected.

It is stated by the petitioner that for no fault of him, he was suspended on a false complaint made by his wife for the offence under Section 498-A I.P.C., which was ended in acquittal. Even after the acquittal of the said criminal case now he is facing hardship in attending the cases filed by his wife in the Courts of the Vizainagaram District i.e., maintenance case as well as O.P. There is also another Small Cause Suit in S.C.No.60 of 2002, which is pending. It is stated that during the pendency of the criminal case, he has taken certain amount and consequently he is facing all the cases in Vizainagaram, and therefore, it is not possible for him all the way to travel from Santhanuthalapadu, Prakasam District, to the Vizianagaram, which is more than 600 kms.

It is further stated by the petitioner that as per the Memo issued by the Government Finance and Planning (FW.FR.II) Department in Memo No.20225/219/FR.II/99, dated 23-7-1999, the Government issued instructions to the effect that when the Government employees are placed under suspension, only full additional charge arrangements shall be made, but shall not be filled up by promotion or appointment by transfer. It is stated that the filling of the said post is not either by promotion or by transfer, but the said post was filled up due to the suspension of the petitioner and the transfer was effected during the course of the counseling and further the said Government Memo is not adopted by the management of the A.P. Residential Educational Society and therefore, the petitioner cannot rely upon the said instructions.

As long as the said instructions are not adopted by the respondents, it is not possible for the respondents to implement the said order.

Though the petitioner has no legal right for insisting upon his reposting at the same

place at Bobbili, where from he was suspended, but having regard to the facts and circumstances of the case, as he was suspended for no fault of him and as many as three cases are pending at Vizianagaram, I am of the view that he may be posted either at Vizianagaram or in any other neighbouring districts as and when any vacancy arises as against the existing or in future vacancies.

The writ petition accordingly is disposed of. No costs.

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22-07-2004

es/shr

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Secretary , Education Department, Government of AP, Secretariat, Hyderabad
2. 2 CCs to the Government Pleader for School Education, High Court Buildings, Hyderabad (OUT).

3. 2 CD copies.